



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4201

by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

225 ILCS 45/1	from Ch. 111 1/2, par. 73.101
225 ILCS 45/1a	from Ch. 111 1/2, par. 73.101a
225 ILCS 45/1c new	
815 ILCS 390/4	from Ch. 21, par. 204
815 ILCS 390/15	from Ch. 21, par. 215
815 ILCS 390/15.5 new	
815 ILCS 390/17	from Ch. 21, par. 217

Amends the Illinois Funeral or Burial Funds Act and the Illinois Pre-Need Cemetery Sales Act. Provides that, before a seller and purchaser enter into a pre-need contract or pre-need sales contract, the seller must disclose and fully explain that the purchaser may fund the contract by choosing one of the following options: depositing the funds into a local banking institution; depositing the funds into a trust program; or other means offered by the seller. Provides that the purchaser shall then choose one of those options. Provides that sellers of pre-need sales contracts must be licensed by the Department of Financial and Professional Regulation. Makes other changes. Effective immediately.

LRB098 15795 ZMM 50828 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Funeral or Burial Funds Act is
5 amended by changing Sections 1 and 1a and by adding Section 1c
6 as follows:

7 (225 ILCS 45/1) (from Ch. 111 1/2, par. 73.101)

8 Sec. 1. Payment under pre-need contract. Except as
9 otherwise provided in this Section, all sales proceeds paid to
10 any person, partnership, association or corporation with
11 respect to merchandise or services covered by this Act, upon
12 any agreement or contract, or any series or combination of
13 agreements or contracts, which has for a purpose the furnishing
14 or performance of funeral services, or the furnishing or
15 delivery of any personal property, merchandise, or services of
16 any nature in connection with the final disposition of a dead
17 human body, including, but not limited to, outer burial
18 containers, urns, combination casket-vault units, caskets and
19 clothing, for future use at a time determinable by the death of
20 the person or persons whose body or bodies are to be so
21 disposed of, shall be held to be trust funds, and shall be
22 placed in trust in accordance with Sections 1b and 2, or shall
23 be used to purchase life insurance or annuities in accordance

1 with Section 2a. The person, partnership, association or
2 corporation receiving said payments under a pre-need contract
3 is hereby declared to be a trustee thereof until deposits of
4 funds are made in accordance with Section 1b or 2a of this Act.

5 This Section applies only to pre-need contracts entered
6 into prior to the effective date of this amendatory Act of the
7 98th General Assembly.

8 Nothing in this Act shall be construed to prohibit the
9 inclusion of outer burial containers in sales contracts under
10 the Illinois Pre-Need Cemetery Sales Act.

11 (Source: P.A. 96-879, eff. 2-2-10.)

12 (225 ILCS 45/1a) (from Ch. 111 1/2, par. 73.101a)

13 Sec. 1a. For the purposes of this Act, the following terms
14 shall have the meanings specified, unless the context clearly
15 requires another meaning:

16 "Beneficiary" means the person specified in the pre-need
17 contract upon whose death funeral services or merchandise shall
18 be provided or delivered.

19 "Licensee" means a seller of a pre-need contract who has
20 been licensed by the Comptroller under this Act.

21 "Outer burial container" means any container made of
22 concrete, steel, wood, fiberglass or similar material, used
23 solely at the interment site, and designed and used exclusively
24 to surround or enclose a separate casket and to support the
25 earth above such casket, commonly known as a burial vault,

1 grave box or grave liner, but not including a lawn crypt as
2 defined in the Illinois Pre-need Cemetery Sales Act.

3 "Parent company" means a corporation owning more than 12
4 cemeteries or funeral homes in more than one state.

5 "Person" means any person, partnership, association,
6 corporation, or other entity.

7 "Pre-need contract" means any agreement or contract, or any
8 series or combination of agreements or contracts, whether
9 funded by trust deposits or life insurance policies or
10 annuities, which has for a purpose the furnishing or
11 performance of funeral services or the furnishing or delivery
12 of any personal property, merchandise, or services of any
13 nature in connection with the final disposition of a dead human
14 body. Nothing in this Act is intended to regulate the content
15 of a life insurance policy or a tax-deferred annuity.

16 "Provider" means a person who is obligated for furnishing
17 or performing funeral services or the furnishing or delivery of
18 any personal property, merchandise, or services of any nature
19 in connection with the final disposition of a dead human body.

20 "Purchaser" means the person who originally paid the money
21 under or in connection with a pre-need contract.

22 "Sales proceeds" means the entire amount paid to a seller,
23 exclusive of sales taxes paid by the seller, finance charges
24 paid by the purchaser, and credit life, accident or disability
25 insurance premiums, upon any agreement or contract, or series
26 or combination of agreements or contracts, for the purpose of

1 performing funeral services or furnishing personal property,
2 merchandise, or services of any nature in connection with the
3 final disposition of a dead human body, including, but not
4 limited to, the retail price paid for such services and
5 personal property and merchandise.

6 "Purchase price" means sales proceeds less finance charges
7 on retail installment contracts.

8 "Seller" means a ~~the~~ person, licensed as a funeral director
9 or a funeral director and embalmer under the Funeral Directors
10 and Embalmers Licensing Code, who sells or offers to sell the
11 pre-need contract to a purchaser, whether funded by a trust
12 agreement, life insurance policy, ~~or~~ tax-deferred annuity, or
13 other means agreed to by the purchaser and seller in the
14 pre-need contract.

15 "Trustee" means a person authorized to hold funds under
16 this Act.

17 (Source: P.A. 92-419, eff. 1-1-02.)

18 (225 ILCS 45/1c new)

19 Sec. 1c. Disclosures; options. Beginning on the effective
20 date of this amendatory Act of the 98th General Assembly,
21 before a seller and purchaser enter into a pre-need contract,
22 the seller must disclose and fully explain that the purchaser
23 may fund the pre-need contract by choosing one of the following
24 options:

25 (1) depositing funds into a local banking institution

- 1 of the purchaser's choosing;
2 (2) depositing funds into a trust program operated by
3 the seller; or
4 (3) other means offered by the seller.
5 The purchaser shall then choose one of those options.

6 Section 10. The Illinois Pre-Need Cemetery Sales Act is
7 amended by changing Sections 4, 15, and 17 and by adding
8 Section 15.5 as follows:

9 (815 ILCS 390/4) (from Ch. 21, par. 204)

10 Sec. 4. Definitions. As used in this Act, the following
11 terms shall have the meaning specified:

12 (A) "Pre-need sales contract" or "Pre-need sales" means any
13 agreement or contract or series or combination of agreements or
14 contracts which have for a purpose the sale of cemetery
15 merchandise, cemetery services or undeveloped interment,
16 entombment or inurnment spaces where the terms of such sale
17 require payment or payments to be made at a currently
18 determinable time and where the merchandise, services or
19 completed spaces are to be provided more than 120 days
20 following the initial payment on the account. An agreement or
21 contract for a memorial, marker, or monument shall not be
22 deemed a "pre-need sales contract" or a "pre-need sale" if the
23 memorial, marker, or monument is delivered within 180 days
24 following initial payment on the account and work thereon

1 commences a reasonably short time after initial payment on the
2 account.

3 (B) "Delivery" occurs when:

4 (1) Physical possession of the merchandise is
5 transferred or the easement for burial rights in a
6 completed space is executed, delivered and transferred to
7 the buyer; or

8 (2) Following authorization by a purchaser under a
9 pre-need sales contract, title to the merchandise has been
10 transferred to the buyer and the merchandise has been paid
11 for and is in the possession of the seller who has placed
12 it, until needed, at the site of its ultimate use; or

13 (3) Following authorization by a purchaser under a
14 pre-need sales contract, the merchandise has been
15 permanently identified with the name of the buyer or the
16 beneficiary and delivered to a licensed and bonded
17 warehouse and both title to the merchandise and a warehouse
18 receipt have been delivered to the purchaser or beneficiary
19 and a copy of the warehouse receipt has been delivered to
20 the licensee for retention in its files; except that in the
21 case of outer burial containers, the use of a licensed and
22 bonded warehouse as set forth in this paragraph shall not
23 constitute delivery for purposes of this Act. Nothing
24 herein shall prevent a seller from perfecting a security
25 interest in accordance with the Uniform Commercial Code on
26 any merchandise covered under this Act.

1 All warehouse facilities to which sellers deliver
2 merchandise pursuant to this Act shall:

3 (i) be either located in the State of Illinois or
4 qualify as a foreign warehouse facility as defined
5 herein;

6 (ii) submit to the Comptroller not less than
7 annually, by March 1 of each year, a report of all
8 cemetery merchandise stored by each licensee under
9 this Act which is in storage on the date of the report;

10 (iii) permit the Comptroller or his designee at any
11 time to examine stored merchandise and to examine any
12 documents pertaining thereto;

13 (iv) submit evidence satisfactory to the
14 Comptroller that all merchandise stored by said
15 warehouse for licensees under this Act is insured for
16 casualty or other loss normally assumed by a bailee for
17 hire;

18 (v) demonstrate to the Comptroller that the
19 warehouse has procured and is maintaining a
20 performance bond in the form, content and amount
21 sufficient to unconditionally guarantee to the
22 purchaser or beneficiary the prompt shipment of the
23 cemetery merchandise.

24 (C) "Cemetery merchandise" means items of personal
25 property normally sold by a cemetery authority not covered
26 under the Illinois Funeral or Burial Funds Act, including but

1 not limited to:

- 2 (1) memorials,
- 3 (2) markers,
- 4 (3) monuments,
- 5 (4) foundations, and
- 6 (5) outer burial containers.

7 (D) "Undeveloped interment, entombment or inurnment
8 spaces" or "undeveloped spaces" means any space to be used for
9 the reception of human remains that is not completely and
10 totally constructed at the time of initial payment therefor in
11 a:

- 12 (1) lawn crypt,
- 13 (2) mausoleum,
- 14 (3) garden crypt,
- 15 (4) columbarium, or
- 16 (5) cemetery section.

17 (E) "Cemetery services" means those services customarily
18 performed by cemetery or crematory personnel in connection with
19 the interment, entombment, inurnment or cremation of a dead
20 human body.

21 (F) "Cemetery section" means a grouping of spaces intended
22 to be developed simultaneously for the purpose of interring
23 human remains.

24 (G) "Columbarium" means an arrangement of niches that may
25 be an entire building, a complete room, a series of special
26 indoor alcoves, a bank along a corridor or part of an outdoor

1 garden setting that is constructed of permanent material such
2 as bronze, marble, brick, stone or concrete for the inurnment
3 of human remains.

4 (H) "Lawn crypt" means a permanent underground crypt
5 usually constructed of reinforced concrete or similar material
6 installed in multiple units for the entombment of human
7 remains.

8 (I) "Mausoleum" or "garden crypt" means a grouping of
9 spaces constructed of reinforced concrete or similar material
10 constructed or assembled above the ground for entombing human
11 remains.

12 (J) "Memorials, markers and monuments" means the object
13 usually comprised of a permanent material such as granite or
14 bronze used to identify and memorialize the deceased.

15 (K) "Foundations" means those items used to affix or
16 support a memorial or monument to the ground in connection with
17 the installation of a memorial, marker or monument.

18 (L) "Person" means an individual, corporation,
19 partnership, joint venture, business trust, voluntary
20 organization or any other form of entity.

21 (M) "Seller" means any person selling or offering for sale
22 cemetery merchandise, cemetery services or undeveloped
23 interment, entombment, or inurnment spaces in accordance with a
24 pre-need sales contract. The seller must be licensed in the
25 State of Illinois by the Department of Financial and
26 Professional Regulation and shall attend at least 24 hours of

1 continuing education in every 2-year period. The continuing
2 education shall be approved by the Department of Financial and
3 Professional Regulation.

4 (N) "Religious cemetery" means a cemetery owned, operated,
5 controlled or managed by any recognized church, religious
6 society, association or denomination or by any cemetery
7 authority or any corporation administering, or through which is
8 administered, the temporalities of any recognized church,
9 religious society, association or denomination.

10 (O) "Municipal cemetery" means a cemetery owned, operated,
11 controlled or managed by any city, village, incorporated town,
12 township, county or other municipal corporation, political
13 subdivision, or instrumentality thereof authorized by law to
14 own, operate or manage a cemetery. "Municipal cemetery" also
15 includes a cemetery placed in receivership pursuant to this Act
16 while such cemetery is in receivership.

17 (O-1) "Outer burial container" means a container made of
18 concrete, steel, wood, fiberglass, or similar material, used
19 solely at the interment site, and designed and used exclusively
20 to surround or enclose a separate casket and to support the
21 earth above such casket, commonly known as a burial vault,
22 grave box, or grave liner, but not including a lawn crypt.

23 (P) "Sales price" means the gross amount paid by a
24 purchaser on a pre-need sales contract for cemetery
25 merchandise, cemetery services or undeveloped interment,
26 entombment or inurnment spaces, excluding sales taxes, credit

1 life insurance premiums, finance charges and Cemetery Care Act
2 contributions.

3 (Q) (Blank).

4 (R) "Provider" means a person who is responsible for
5 performing cemetery services or furnishing cemetery
6 merchandise, interment spaces, entombment spaces, or inurnment
7 spaces under a pre-need sales contract.

8 (S) "Purchaser" or "buyer" means the person who originally
9 paid the money under or in connection with a pre-need sales
10 contract.

11 (T) "Parent company" means a corporation owning more than
12 12 cemeteries or funeral homes in more than one state.

13 (U) "Foreign warehouse facility" means a warehouse
14 facility now or hereafter located in any state or territory of
15 the United States, including the District of Columbia, other
16 than the State of Illinois.

17 A foreign warehouse facility shall be deemed to have
18 appointed the Comptroller to be its true and lawful attorney
19 upon whom may be served all legal process in any action or
20 proceeding against it relating to or growing out of this Act,
21 and the acceptance of the delivery of stored merchandise under
22 this Act shall be signification of its agreement that any such
23 process against it which is so served, shall be of the same
24 legal force and validity as though served upon it personally.

25 Service of such process shall be made by delivering to and
26 leaving with the Comptroller, or any agent having charge of the

1 Comptroller's Department of Cemetery and Burial Trusts, a copy
2 of such process and such service shall be sufficient service
3 upon such foreign warehouse facility if notice of such service
4 and a copy of the process are, within 10 days thereafter, sent
5 by registered mail by the plaintiff to the foreign warehouse
6 facility at its principal office and the plaintiff's affidavit
7 of compliance herewith is appended to the summons. The
8 Comptroller shall keep a record of all process served upon him
9 under this Section and shall record therein the time of such
10 service.

11 (Source: P.A. 96-879, eff. 2-2-10.)

12 (815 ILCS 390/15) (from Ch. 21, par. 215)

13 Sec. 15. (a) Whenever a seller receives anything of value
14 under a pre-need sales contract, the person receiving such
15 value shall deposit 50% of all proceeds received into one or
16 more trust funds maintained pursuant to this Section, except
17 that, in the case of proceeds received for the purchase of
18 outer burial containers, 85% of the proceeds shall be deposited
19 into one or more trust funds. Such deposits shall be made until
20 the amount deposited in trust equals 50% of the sales price of
21 the cemetery merchandise, cemetery services and undeveloped
22 spaces included in such contract, except that, in the case of
23 deposits for outer burial containers, deposits shall be made
24 until the amount deposited in trust equals 85% of the sales
25 price. In the event an installment contract is factored,

1 discounted or sold to a third party, the seller shall deposit
2 an amount equal to 50% of the sales price of the installment
3 contract, except that, for the portion of the contract
4 attributable to the sale of outer burial containers, the seller
5 shall deposit an amount equal to 85% of the sales price.
6 Proceeds required to be deposited in trust which are
7 attributable to cemetery merchandise and cemetery services
8 shall be held in a "Cemetery Merchandise Trust Fund". Proceeds
9 required to be deposited in trust which are attributable to the
10 sale of undeveloped interment, entombment or inurnment spaces
11 shall be held in a "Pre-construction Trust Fund". If
12 merchandise is delivered for storage in a bonded warehouse, as
13 authorized herein, and payment of transportation or other
14 charges totaling more than \$20 will be required in order to
15 secure delivery to the site of ultimate use, upon such delivery
16 to the warehouse the seller shall deposit to the trust fund the
17 full amount of the actual or estimated transportation charge.
18 Transportation charges which have been prepaid by the seller
19 shall not be deposited to trust funds maintained pursuant to
20 this Section. As used in this Section, "all proceeds" means the
21 entire amount paid by a purchaser in connection with a pre-need
22 sales contract, including finance charges and Cemetery Care Act
23 contributions, but excluding sales taxes and credit life
24 insurance premiums.

25 (b) The seller shall act as trustee of all amounts received
26 for cemetery merchandise, services, or undeveloped spaces

1 until those amounts have been deposited into the trust fund.
2 All trust deposits required by this Act shall be made within 30
3 days following the end of the month of receipt. The seller must
4 retain a corporate fiduciary as an independent trustee for any
5 amount of trust funds. Upon 30 days' prior written notice from
6 the seller to the Comptroller, the seller may change the
7 trustee of the trust fund. Failure to provide the Comptroller
8 with timely prior notice is an intentional violation of this
9 Act.

10 (c) A trust established under this Act must be maintained
11 with a corporate fiduciary as defined in Section 1-5.05 of the
12 Corporate Fiduciary Act or with a foreign corporate fiduciary
13 recognized by Article IV of the Corporate Fiduciary Act.

14 (d) Funds deposited in the trust account shall be
15 identified in the records of the seller by the name of the
16 purchaser. Nothing shall prevent the trustee from commingling
17 the deposits in any such trust fund for purposes of the
18 management thereof and the investment of funds therein as
19 provided in the "Common Trust Fund Act", approved June 24,
20 1949, as amended. In addition, multiple trust funds maintained
21 pursuant to this Act may be commingled or commingled with other
22 funeral or burial related trust funds, provided that all record
23 keeping requirements imposed by or pursuant to law are met.

24 (e) In lieu of a pre-construction trust fund, a seller of
25 undeveloped interment, entombment or inurnment spaces may
26 obtain and file with the Comptroller a performance bond in an

1 amount at least equal to 50% of the sales price of the
2 undeveloped spaces or the estimated cost of completing
3 construction, whichever is greater. The bond shall be
4 conditioned on the satisfactory construction and completion of
5 the undeveloped spaces as required in Section 19 of this Act.

6 Each bond obtained under this Section shall have as surety
7 thereon a corporate surety company incorporated under the laws
8 of the United States, or a State, the District of Columbia or a
9 territory or possession of the United States. Each such
10 corporate surety company must be authorized to provide
11 performance bonds as required by this Section, have paid-up
12 capital of at least \$250,000 in cash or its equivalent and be
13 able to carry out its contracts. Each pre-need seller must
14 provide to the Comptroller, for each corporate surety company
15 such seller utilizes, a statement of assets and liabilities of
16 the corporate surety company sworn to by the president and
17 secretary of the corporation by January 1 of each year.

18 The Comptroller shall prohibit pre-need sellers from doing
19 new business with a corporate surety company if the company is
20 insolvent or is in violation of this Section. In addition the
21 Comptroller may direct a pre-need seller to reinstate a
22 pre-construction trust fund upon the Comptroller's
23 determination that the corporate surety company no longer is
24 sufficient security.

25 All performance bonds issued pursuant to this Section must
26 be irrevocable during the statutory term for completing

1 construction specified in Section 19 of this Act, unless
2 terminated sooner by the completion of construction.

3 (f) Whenever any pre-need contract shall be entered into
4 and include 1) items of cemetery merchandise and cemetery
5 services, and 2) rights to interment, inurnment or entombment
6 in completed spaces without allocation of the gross sale price
7 among the items sold, the application of payments received
8 under the contract shall be allocated, first to the right to
9 interment, inurnment or entombment, second to items of cemetery
10 merchandise and cemetery services, unless some other
11 allocation is clearly provided in the contract.

12 (g) Any person engaging in pre-need sales who enters into a
13 combination sale which involves the sale of items covered by a
14 trust or performance bond requirement and any item not covered
15 by any entrustment or bond requirement, shall be prohibited
16 from increasing the gross sales price of those items not
17 requiring entrustment with the purpose of allocating a lesser
18 gross sales price to items which require a trust deposit or a
19 performance bond.

20 (h) This Section applies only to pre-need sales entered
21 into prior to the effective date of this amendatory Act of the
22 98th General Assembly.

23 (Source: P.A. 96-879, eff. 2-2-10; 97-593, eff. 8-26-11.)

24 (815 ILCS 390/15.5 new)

25 Sec. 15.5. Disclosures; options. Beginning on the

1 effective date of this amendatory Act of the 98th General
2 Assembly, before a seller and purchaser enter into a pre-need
3 sales contract, the seller must disclose and fully explain that
4 the purchaser may fund the pre-need sales contract by choosing
5 one of the following options:

6 (1) depositing funds into a local banking institution
7 of the purchaser's choosing;

8 (2) depositing funds into a trust program operated by
9 the seller; or

10 (3) other means offered by the seller.

11 The purchaser shall then choose one of those options.

12 (815 ILCS 390/17) (from Ch. 21, par. 217)

13 Sec. 17. (a) The principal and undistributed income of the
14 trust created pursuant to Section 15 or Section 15.5 of this
15 Act shall be paid to the seller if:

16 (1) the seller certifies by sworn affidavit to the trustee
17 that the purchaser or the beneficiary named in the pre-need
18 contract has deceased and that seller has fully delivered or
19 installed all items included in the pre-need contract and fully
20 performed all pre-need cemetery services he is required to
21 perform under the pre-need contract; or

22 (2) the seller certifies by sworn affidavit to the trustee
23 that seller has made full delivery, as defined herein.

24 (Source: P.A. 84-239.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.